

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA

Plaintiff

v.

TROPICAL FRUIT, S.E.; AVSHALOM
LUBIN; CESAR OTERO ACEVEDO; and
PEDRO TOLEDO GONZALEZ

Defendants

Civil Action No. 97-1442-DRD

DEFENDANTS' MOTION IN COMPLIANCE WITH ORDER TO SHOW CAUSE

TO THE HONORABLE COURT:

COME NOW defendants, Tropical Fruit, S.E., Avshalom Lubin, César Otero Acevedo and Pedro Toledo González, (hereinafter referred to collectively as "Defendants" or "Tropical Fruit") represented by the undersigned counsel, and very respectfully allege and pray:

The United States of America, on behalf of the Environmental Protection Agency ("EPA") has moved the Honorable Court for an order to show cause why defendants should not be held in civil contempt and ordered to immediately comply with the Consent Decree entered on October 25, 2001 ("the Consent Decree"). The Court has ordered the Defendants to show cause as to why the remedies sought by Plaintiff should not be granted as requested. (Docket No. 98)

On April 12, 2005, the appearing parties requested an additional extension of time until today May 6, 2005 to file this motion. (Docket No. 102) Plaintiff opposed the request on April 13, 2005. (Docket No. 103) Afterwards, Defendants requested leave to reply and

tendered a reply therewith. (Docket No. 104) To date, the motions related to the extension of time requested are pending. Nevertheless, Defendants hereby comply with the Court's order to show cause as to why the remedies sought by Plaintiff should not be granted as requested. In compliance with the Court's order, Defendants' motion and the memorandum of law in support thereof are submitted within the twenty-five page limit.

As further discussed in the Memorandum of Law in Support of Defendants' Motion in Compliance with Order to Show Cause attached hereto, EPA's motion should be denied. EPA has not met its burden of proof which requires clear and convincing evidence to establish the civil contempt alleged. Moreover, Tropical Fruit has made diligent, good faith efforts which have resulted in substantial compliance with the terms of the Consent Decree. In such circumstances, no finding of contempt should ensue.

WHEREFORE, it is respectfully requested that this Honorable Court deem its order complied with and consequently find that Defendants have showed cause why Plaintiffs' motion for Defendants to be held in contempt and ordered to immediately comply with the terms of the Consent Decree as interpreted by the EPA should not be granted as requested.

Respectfully submitted.

In San Juan, Puerto Rico, on this 6th day of May, 2005.

I HEREBY CERTIFY that on May 6th, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Mr. Henry Friedman, Esq., Environmental Enforcement Section, U. S. Department of Justice, PO Box 7611, Washington, D. C. 20044; Isabel Muñoz, Assistant United States Attorney, Federal Building, Room 452 Chardon Avenue, Hato Rey, Puerto

Rico 00918.

I HEREBY CERTIFY that I have mailed by United States Postal Service the foregoing document to the following non CM/ECF participants: German A. González PO Box 190764 San Juan, PR 00919-0764.

SANCHEZ-BETANCES, SIFRE,
MUÑOZ-NOYA & RIVERA, PSC.
Counsel for Defendants
PO Box 195055
San Juan, PR 00919-5055
Tel. (787) 756-7880
Fax (787) 753-6580
jsifre@sbsmnr.com
mvila@sbsmnr.com

s/ Jaime Sifre Rodriguez
ATTORNEY JAIME SIFRE-RODRIGUEZ
USDC-PR: 117409

s/Marta E.Vila Baez
MARTA E. VILA BAEZ
USDC NO. 218111